

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

WILLIAMS V. KRAMER

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
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DAVE WILLIAMS, APPELLANT,
V.
JEROME KRAMER, LINCOLN COUNTY SHERIFF, AND
LINCOLN COUNTY, NEBRASKA, APPELLEES.

Filed September 25, 2012. No. A-11-900.

Appeal from the District Court for Lincoln County: DAVID URBOM, Judge. Affirmed.
John H. Marsh, of Knapp, Fangmeyer, Aschwege, Besse & Marsh, P.C., for appellant.
Rebecca Harling, Lincoln County Attorney, and Joe W. Wright for appellees.

IRWIN, SIEVERS, and PIRTLE, Judges.
PIRTLE, Judge.

INTRODUCTION

Dave Williams was terminated from his employment as the jail administrator for Lincoln County, Nebraska, by the sheriff of Lincoln County, and a hearing officer upheld the termination. Williams filed a petition in error in the district court for Lincoln County, which affirmed the termination of Williams' employment. Because we conclude that the hearing officer acted within his jurisdiction and that there is sufficient, relevant evidence to support the decision of the hearing officer, we affirm the district court's decision.

BACKGROUND

Williams was hired by the Lincoln County sheriff, Jerome Kramer, in 2007 to work in a civilian capacity as the jail administrator for the Lincoln County jail. He was responsible for the day-to-day operations of the jail, which included figuring the time inmates would serve in jail based on the sentence imposed and the good time calculation. Williams' termination of employment came about as the result of his miscalculation of inmate Ted Cook's jail time.

On March 18, 2010, Cook pled guilty in Lincoln County Court to second-offense theft by shoplifting and was sentenced to 90 days in jail. In a separate case, Cook pled guilty to driving under the influence and was sentenced to 60 days in jail and a \$400 fine. The 60-day sentence and the fine were ordered to be served concurrently with the 90-day sentence. The execution of each sentence was suspended until April 2, but at the request of Cook, the sentences were later moved up to March 31.

After sentencing, Cook went to the Lincoln County sheriff's office for prebooking, where he spoke with Marla Haines, the jail clerk. Haines testified that Cook informed her that he did not have to pay the \$400 fine because it was ordered to run concurrently with the jail time. Haines testified that after Cook left, she informed Williams of her conversation with Cook and how he claimed that he was going to be allowed to sit out his fine concurrently with his 90-day jail sentence. Williams indicated that the time served for sitting out fines was not usually figured that way.

On March 19, 2010, Haines picked up the commitment orders for Cook from the county court and gave them to Williams. The commitment order with the 60-day jail sentence and fine specifically provided that Cook "is to sit out the [\$]400.00 concurrent with [the 90-day sentence]." Haines pointed out to Williams that Cook did not have to sit out the fine at the end of his jail sentence. Haines testified that she specifically remembered handing Williams the commitment orders for Cook "because that commitment did say that [Cook] didn't have to sit out the fines and costs. So [she] pointed . . . it out and told [Williams] that it looked like [Cook] was telling the truth."

Terry Derman, the records clerk for Lincoln County Court, testified that Williams called her on March 19, 2010, regarding Cook's commitment orders. Derman testified that Williams had some questions about the orders, and Derman explained that the sentence of 60 days in jail and the \$400 fine was to run concurrent with the 90-day sentence. During the conversation, Williams expressed to Derman that the jail usually has defendants sit out the fine after the jail sentence has been served. Derman testified that she told Williams that was not what the judge ordered in this particular case; the judge wanted the 60-day jail sentence and the fine to run concurrent with the 90-day sentence. Williams told Derman that he did not care how the judge ordered it on the "bench sheet" and further indicated that he was going to have Cook complete the jail time and then sit out the \$400 fine.

Derman testified that when she got off the telephone with Williams, she went to talk with her supervisor, Keri Sides, who is also the judge's bailiff, about her conversation with Williams. The judge happened to be present at the time also. Derman told them about her conversation with Williams, and the judge advised her to write down her recollection of the conversation with Williams, which she did.

Sides testified and confirmed that Derman came to her after having a conversation with Williams about Cook's commitments. Sides testified that Derman relayed that Williams had indicated he was not going to follow Cook's sentences the way they were ordered.

Cook reported to jail on March 31, 2010, to begin serving his sentences. With the computation of good time as the law existed at that time, a 90-day sentence equaled 62 days that must be served, and Cook's sentence would be completed on June 1. This would include the jail sentences in both cases and the \$400 fine. If the \$400 fine was served consecutively to the jail

sentences, Cook would have to serve 7 more days because fines were sat out in jail at \$60 per day, making his release date June 8.

On April 2, 2010, Cook called Derman, complaining that the jail was going to keep him a week longer than his sentences required. Derman testified that she assured Cook that he would not serve any extra time.

On April 20, 2010, Dean Sparks, the chief deputy sheriff for Lincoln County, received a complaint from the judge who sentenced Cook regarding Williams. The complaint involved allegations that the jail was going to hold Cook beyond the time stated in the commitment orders. The sheriff's office decided to start an investigation into the allegations.

That investigation revealed that despite the commitment orders, and the date upon which Cook's sentences should be completed, the jail records showed a release date of June 8, 2010. The jail records were then corrected by Sgt. Jeff Hedgecock, to show a June 1 release date, the correct release date based on the commitment orders.

Hedgecock testified that Sparks contacted him and asked him to look at Cook's commitment orders and to refigure the release date. He testified that before he recalculated it, the release date written on the commitment order was June 8, 2010. Hedgecock also testified that based on the figures written in pencil on the commitments, he could tell that Williams had calculated the original release date because he recognized Williams' handwriting. He testified that he erased the figures so he would have room to refigure the release date.

On April 21, 2010, Sparks and Kramer informed Williams of the complaint against him and placed him on administrative leave. Following further investigation and a hearing, Kramer terminated Williams' employment on July 21. Kramer concluded that there was "no evidence to support that [Williams] did not intentionally figure . . . Cook's time to cause him to be released on June 8, 2010, rather than June 1, 2010."

Williams appealed Kramer's decision, and the appeal was heard by a merit commission hearing officer on November 18, 2010. Multiple witnesses were called and gave testimony as previously set forth. Williams also testified.

Williams testified that one of his jobs as jail administrator is to figure the time inmates will serve in jail, but he is not the only staff member that can figure the commitments. Williams testified that he relies on the commitment order when figuring how much time an inmate is supposed to serve. He denied telling anyone that he was going to disregard the court's order in regard to Cook and testified that he would never disobey a judge's order. He testified that he prepared Cook's commitments on March 19, 2010, and that the commitments were obvious on their face. He admits that he initially miscalculated the release date based on the fine being sat out consecutive to the jail time, but that he caught his mistake and corrected it before the commitments left his desk. Williams also testified that he has hearing difficulties and that he possibly misunderstood what Derman told him about Cook's commitments.

Following the hearing, the hearing officer issued a decision on December 1, 2010, finding that Kramer's conclusion that Williams intentionally violated a court order was supported by evidence and was not arbitrary, capricious, or unreasonable. Accordingly, the hearing officer affirmed Kramer's decision to terminate Williams' employment.

On December 10, 2010, Williams filed a petition in error in the district court for Lincoln County asking the court to reverse the decision of the hearing officer. The district court entered

an order on September 27, 2011, finding that the tribunal acted within its jurisdiction and that the decision of the hearing officer was supported by sufficient relevant evidence. The district court affirmed the hearing officer's decision.

ASSIGNMENTS OF ERROR

Williams sets forth eight assignments of error, which we consolidate into the following: The district court erred in finding that the decision of the hearing officer upholding the sheriff's termination of Williams' employment was supported by sufficient evidence and was not arbitrary and capricious.

STANDARD OF REVIEW

In reviewing an administrative agency decision on a petition in error, both the district court and the appellate court review the decision to determine whether the agency acted within its jurisdiction and whether sufficient, relevant evidence supports the decision of the agency. *Fleming v. Civil Service Comm. of Douglas Cty.*, 280 Neb. 1014, 792 N.W.2d 871 (2011). The evidence is sufficient, as a matter of law, if an administrative tribunal could reasonably find the facts as it did on the basis of the testimony and exhibits contained in the record before it. *Id.* The reviewing court in an error proceeding is restricted to the record before the administrative agency and does not reweigh evidence or make independent findings of fact. *Id.* Finally, agency action is "arbitrary and capricious" if it is taken in disregard of the facts or circumstances of the case, without some basis which would lead a reasonable and honest person to the same conclusion. *Id.*

ANALYSIS

Williams argues that the decision of the hearing officer was not supported by sufficient evidence and was arbitrary and capricious. We conclude that there is sufficient, relevant evidence that supports the conclusion that Williams intentionally miscalculated Cook's jail sentence.

The evidence shows that Williams was well aware that the court had ordered that Cook's fine was to be served concurrently with his jail sentences, rather than at the end of his jail time, and that Williams chose to go against the court's orders. Williams had three conversations with court personnel in regard to how Cook's jail sentences and fine were to be served.

The first conversation was with Haines and occurred after Cook had been in the sheriff's office for prebooking. After Cook left, Haines told Williams that Cook claimed that his sentences allowed him to sit out his fine concurrent with his 90-day sentence. The second conversation was also with Haines and took place after she picked up Cook's commitment orders. Haines told Williams that based on the commitment orders, Cook was to sit out the fine concurrently with his jail sentences, rather than sitting out the fine at the end of his jail time.

The third conversation was with Derman, in which she told Williams that based on what the judge had ordered, Cook's fine was to be served concurrently with the jail sentences. Williams told her he was not going to calculate Cook's sentence that way, but, rather, he was going to have Cook sit out the \$400 fine after Cook completed the sentences of jail time. Derman's notes, made shortly after the telephone conversation with Williams, support her version of the conversation. Further, after Derman's conversation with Williams, she told Sides

that Williams had indicated he was not going to follow Cook's sentences in the way they were ordered by the court.

As the hearing officer found, Williams' argument that he was hard of hearing and must have misunderstood what Derman told him is not persuasive or borne out by the evidence.

Further, the commitment orders from the court were easy to understand, as admitted by Williams. The one ordering the 60-day jail sentence and fine specifically provided, Cook "is to sit out the [\$]400.00 concurrent with [the 90-day sentence]."

Despite Williams' being told about Cook's sentences and the commitments being clear, the jail records indicated that Cook's release date was June 8, 2010, a week later than the commitments ordered, and the date Cook would be released if he was to sit out the fine after his jail sentence was complete. The June 8 release date is in direct opposition to the court's order. Hedgecock testified that before he recalculated Cook's release date, he could tell that Williams had calculated the original release date because he recognized Williams' handwriting.

The hearing officer's decision to uphold the termination of Williams' employment is supported by the evidence and is not arbitrary, capricious, or unreasonable. Therefore, the district court did not err in affirming the decision of the hearing officer and Williams' assignment of error is without merit.

CONCLUSION

We conclude that the hearing officer's findings were supported by sufficient evidence and were not arbitrary, capricious, or unreasonable. Accordingly, the district court did not err in affirming the decision of the hearing officer to uphold Kramer's decision to terminate Williams' employment. The order of the district court affirming Williams' termination of employment is affirmed.

AFFIRMED.